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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 676

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, CLAYTON J. McPHAIL, BURT T. COOL and RICHARD A. ALTMEIER,

Petitioners,

vs.

COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO, AND THE HONORABLE JOHN J. CONNORS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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TABLE OF CONTENTS.

Opinion	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ	4
Conclusion	9

APPENDIXES.

Opinion of the Supreme Court of Ohio	10
Judgment of the Supreme Court of Ohio Denying the Writ of Prohibition	12
Petition for Writ of Prohibition	12
§ 3 First of the Railway Labor Act, 45 U. S. C. A. § 153 First (1934), as amended (Supp. I, 1966, at 90)	17

TABLE OF AUTHORITIES.

Cases.

Amalgamated Clothing Workers of America v. Richman Brothers Co., 348 U. S. 511 (1955) 8

Brotherhood of Locomotive Engineers v. L. & N. Ry. Co., 373 U. S. 33 (1963) 4

Brotherhood of R. R. Trainmen v. Central of Georgia Ry. Co., 202 F. Supp. 324, 329 (M. D. Ga. 1961) .. 8

Gunther v. San Diego & Arizona E. Ry. Co., 382 U. S. 257 (1965) 5, 6

The Lessee of Hickey v. Stewart, 44 U. S. (3 How.) 750 (1845) 7

State, ex rel. v. Brough, 94 Ohio St. 115, 113 N. E. 683 (1916) 7

State, ex rel. Mansfield Telephone Company v. Mayer, 5 Ohio St. 2d 222, 215 N. E. 2d 375 (1966) 6

State, ex rel. Toledo Shore Line Rd. Co. v. Court of Common Pleas, 11 Ohio St. 2d 193, 228 N. E. 2d 313 (1967) 1

Union Pacific R. Co. v. Price, 360 U. S. 601 (1959) .. 5, 8

Statutes.

Railway Labor Act, 45 U. S. C. A. §§ 151-164, at 462 (1926), as amended 2

§ 3, First (45 U. S. C. A. 153 First) 2, 17

Judicial Code, 28 U. S. C. A. § 1257 (3), at 144 (1948) 2

Judicial Code, 28 U. S. C. A. § 2283, at 107 (1948) ... 8

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THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, CLAYTON J. McPHAIL, BURT T. COOL and RICHARD A. ALTMEIER,

Petitioners,

vs.

COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO, AND THE HONORABLE JOHN J. CONNORS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

Petitioners respectfully pray for a writ of certiorari to review the judgment of the Supreme Court of Ohio denying a writ to prohibit respondents from assuming jurisdiction and from further proceeding in an action pending before them.

OPINION.

The Opinion of the Supreme Court of Ohio is reported in *State, ex rel. Toledo Shore Line Rd. Co. v. Court of Common Pleas,* 11 Ohio St. 2d 193, 228 N. E. 2d 313 (1967) and reproduced in the appendix herein.

JURISDICTION.

The judgment of the Supreme Court of Ohio was entered on the 19th day of July, 1967.

The jurisdiction of this Court is invoked under the Judicial Code, 28 U. S. C. A. § 1257 (3), at 144 (1948), petitioners having been deprived of a substantial federal right under the Railway Labor Act, 45 U. S. C. A. §§ 151-164, at 462 (1926), *as amended*.

QUESTIONS PRESENTED.

Where a union files a submission with the National Railroad Adjustment Board under § 3 First (i) of the Railway Labor Act on behalf of an employee as a result of his disciplinary suspension from service, and the employee then files an action in a state court for conspiracy against the carrier and the officials who disciplined him, can the state court exercise jurisdiction over the subject matter?

Petitioners submit that the Supreme Court of Ohio erred in holding that respondents can exercise such jurisdiction.

STATUTES INVOLVED.

§ 3 First of the Railway Labor Act, 45 U. S. C. A. § 153 First (1934), *as amended* (Supp. I, 1966, at 90) relating to the grievance procedure here involved, is set forth in the appendix.

STATEMENT OF THE CASE.

Respondents having demurred to a petition for writ of prohibition filed by petitioners in the Supreme Court of Ohio as an original action, reference is made to that petition in the appendix herein for a complete statement of the admitted facts. No evidence was taken in the court below since it was agreed by counsel under the rules that the demurrer would be dispositive of the action. Thus, the jurisdictional question presented herein is solely one of law upon the demurrer to the petition. A brief summary of the critical facts upon which the case turns follows:

On December 20, 1964 the Brotherhood of Locomotive Firemen and Enginemen filed a submission with the National Railroad Adjustment Board, First Division, in Chicago, Illinois, on behalf of a Shore Line employee, in accordance with his rights under § 3 First (i) of the Railway Labor Act, for a sustaining award for lost wages during his suspension from service. As a basis for this submission, the statement of facts therein alleges that the employee, as a result of a dispute which arose on the property, was wrongfully disciplined because the evidence did not support the charge against him and because he did not receive a fair hearing. The submission is pending before the Adjustment Board as of the preparation of this petition.

On January 26, 1965 the employee filed an action against petitioners in the Court of Common Pleas of Lucas County, Ohio, asking compensatory and punitive damages for humiliation, physical pain, mental anguish, and injury to his reputation, and claiming a conspiracy amongst petitioners based upon the identical facts alleged in the pending submission before the Adjustment Board.

Petitioners filed a motion for summary judgment with supporting affidavits and brief upon the ground that the respondent Court of Common Pleas did not have jurisdiction of the subject matter, which motion was overruled by respondent the Honorable John J. Connors.

Petitioners then filed a petition for writ of prohibition in the Supreme Court of Ohio to prohibit respondents from assuming jurisdiction in the pending action and from further proceeding therein. Respondents filed a demurrer to the petition upon the ground that it did not state a cause of action since the Court of Common Pleas possessed the authority initially to determine its own jurisdiction over the subject matter in an action before it. The demurrer was sustained and the writ denied.

REASONS FOR GRANTING THE WRIT.

Respondents have usurped the exclusive jurisdiction of the Adjustment Board, thereby defeating petitioners' federal right under § 3 First (i) to have this employee dispute heard by that forum alone, and thereby further defeating the effect of any favorable Adjustment Board decision on the merits.

This Court has held in a series of cases that the Adjustment Board has primary, mandatory and exclusive jurisdiction under § 3 First. In *Brotherhood of Locomotive Engineers v. L. & N. Ry. Co.*, 373 U. S. 33 (1963), Justice Stewart, speaking for a majority of the Court, summarized the principles here involved, beginning at page 38 of 373 U. S. as follows:

> "The several decisions of this Court interpreting § 3 First have made it clear that this statutory grievance procedure is a mandatory, exclusive, and comprehensive system for resolving grievance disputes. The right of one party to place the disputed issue before

the Adjustment Board, with or without the consent of the other, has been firmly established. Brotherhood of R. Trainmen v. Chicago River & I. R. Co. 353 US, at 34. And the other party may not defeat this right by resorting to some other forum. Thus, in Order of R. Conductors v. Southern R. Co. 339 US 255, 94 L ed 811, 70 S Ct 585, the Court held that a state court could not take jurisdiction over an employer's declaratory judgment action concerning an employee grievance subject to § 3 First, because, "if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3 First (i) * * * which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board." Id. 339 US at 256, 257. See Slocum v. Delaware, L. & W. R. Co. 339 US 239, 94 L ed 795, 75 S Ct 577. Similarly, an employee is barred from choosing another forum in which to litigate claims arising under the collective agreement. Pennsylvania R. Co. v. Day, 360 US 548, 552, 553, 3 L ed 2d 1422, 1426, 79 S Ct 1322. A corollary of this view has been the principle that the process of decision through the Adjustment Board cannot be challenged collaterally by methods of review not provided for in the statute. * * *"

In *Union Pacific R. Co. v. Price*, 360 U. S. 601 (1959), the Court held that an employee submission to the Adjustment Board precludes a common law action for damages because Congress intended this remedy as a final means for settling minor disputes.

The most recent case is *Gunther v. San Diego & Arizona E. Ry. Co.*, 382 U. S. 257 (1965), holding that an award of the Adjustment Board is not reviewable in the courts by the carrier merely because part of it is a money award, the size of which the court has power to determine,

and once again emphasizing the purpose of the Railway Labor Act and the exclusive nature of the jurisdiction of the Adjustment Board. (Subsequent to *Gunther*, § 3 First was amended in part by Congress to allow an appeal to the district court if either party is aggrieved by the terms of an award, but such review is limited to a consideration of whether the Adjustment Board complied with the requirements of § 3 First or of fraud by a member of the division making the order (subd. First, (q)). The Adjustment Board continues to have exclusive jurisdiction of employee grievances under the statute as amended.)

The judgment of the Supreme Court of Ohio is not in accord with and cannot be reconciled with the cases cited above. In its per curiam opinion (11 Ohio St. 2d 193), the Ohio court held that respondents could determine their own jurisdiction over the subject matter in the pending action. But this Court has specifically held that the Adjustment Board has exclusive jurisdiction of employee disputes of this character. Consequently, respondents cannot determine their own jurisdiction in this class of cases, it being their duty to follow the law laid down by this Court, which requires them to decline jurisdiction and defer to the Adjustment Board.

The Ohio court cited and relied upon the case of *State, ex rel. Mansfield Telephone Company v. Mayer*, 5 Ohio St. 2d 222, 215 N. E. 2d 375 (1966), in support of the proposition that the Court of Common Pleas is a court of general jurisdiction and, as such, possesses the authority to determine its own jurisdiction. But the decision in *Mansfield* rested solely upon an interpretation and application of Ohio law with regard to the jurisdiction of the Court of Common Pleas and the Public Utilities Commission of Ohio. The federal jurisdictional question, which has been decided by this Court, did not arise.

Prohibition is a preventive remedy rather than a corrective remedy under the Ohio law as well as the common law. The only purpose of the writ is to keep inferior courts or tribunals within the limits of their own jurisdiction, and to prevent them from encroaching upon the jurisdiction of other tribunals. Thus, the writ will not lie to prevent an anticipated, erroneous judgment if the lower court has jurisdiction. On the other hand, if it is clear that a lower court does not have jurisdiction, the petitioner is entitled to the writ as a matter of right under Ohio law, the rule being stated as follows in the second paragraph of the syllabus of the leading Ohio case of *State, ex rel. v. Brough*, 94 Ohio St. 115, 113 N. E. 683 (1916):

> "The power to award writs of prohibition having been conferred on this court by the constitution, and that instrument having provided that no law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of this court, *the power will always be exercised where it clearly appears that a court or tribunal whose action is sought to be prohibited has no jurisdiction of the cause* or is about to exceed its jurisdiction."

Thus, it is clear that the jurisdictional question presented herein is the sole ground upon which the Supreme Court of Ohio denied the writ sought by petitioners. There is no ground upon which the writ could have been otherwise denied.

If petitioners are correct in their contention herein, then the assumption of jurisdiction by respondents in overruling petitioners' motion for summary judgment was a usurpation of the power of the Adjustment Board. Consequently, any further proceedings before respondents will be utterly void. This is the rule of *The Lessee of Hickey v. Stewart*, 44 U. S. (3 How.) 750 (1845), which is

factually similar to the case at bar. To avoid such a proceeding and the dilemma of defending the same claim in two different and unrelated tribunals, petitioners pursued the only remedy available to them (a petition for injunction in the federal court would have been denied under § 2283 of the Judicial Code, 28 U. S. C. A. § 2283, at 107 (1948) and the rule of *Amalgamated Clothing Workers of America v. Richman Brothers Co.*, 348 U. S. 511 (1955)). But the Supreme Court of Ohio refused to recognize the applicable decisions of this Court with regard to the exclusive jurisdiction of the Adjustment Board and its judgment thereby sanctions a void proceeding expressly prohibited by this Court.

The employee in the case at bar has attempted to circumvent the grievance procedure prescribed by § 3 First by couching his petition in the Court of Common Pleas in terms of a conspiracy. An allegation of conspiracy and a demand for punitive damages, however, do not change the nature of a cause of action at common law nor under the Railway Labor Act. The gist of a conspiracy action is the underlying wrong alleged, which in the case at bar is the suspension from service. It follows that such an allegation will not serve to confer on a court jurisdiction over a controversy of which the Adjustment Board has exclusive jurisdiction. *Brotherhood of R. R. Trainmen v. Central of Georgia Ry. Co.*, 202 F. Supp. 324, 329 (M. D. Ga. 1961). Moreover, regardless of the relief sought, the Railway Labor Act provides the complete remedy for an aggrieved employee. *Union Pacific R. Co. v. Price*, 360 U. S. 601 (1959).

CONCLUSION.

Petitioners have the right to have the employee dispute in question heard exclusively by the Adjustment Board on the pending submission, and yet the necessary effect of the decision of the Court below is to deny them this right and require them to defend the action pending before respondents contrary to the compulsory grievance procedure set out in § 3 First of the Railway Labor Act. Accordingly, the writ sought herein should be allowed and the judgment of the Ohio Supreme Court reversed.

It is submitted that the question presented herein involves important considerations in the handling of employee grievances by unions and carriers under § 3 First of the Railway Labor Act.

Respectfully,

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APPENDIX.

OPINION OF THE SUPREME COURT OF OHIO.

(11 Ohio St. 2d 193.)

THE STATE, EX REL. THE DETROIT AND TOLEDO SHORE LINE RD. CO. ET AL., *v.* COURT OF COMMON PLEAS OF LUCAS COUNTY ET AL.

Prohibition—Not available to prevent anticipated erroneous judgment—Suit to prevent Common Pleas Court from assuming jurisdiction.

(No. 40867—Decided July 19, 1967.)

IN PROHIBITION.

This is an action in prohibition originating in this court.

Relators, The Detroit and Toledo Shore Line Railroad Company and certain of its officers, seek to prevent respondents, Court of Common Pleas and a judge thereof, from acting on a case pending before it, in which Emory F. Gensler is plaintiff and the relators in the instant action are defendants. It is relators' contention that the National Railroad Adjustment Board has exclusive jurisdiction over that case which was filed in the Court of Common Pleas and arose as the result of a suspension from employment for disciplinary purposes of Gensler by the railroad's superintendent, relator Burt T. Cool.

Gensler appealed from the order of discharge to the general manager. Upon the appeal the discharge was modified to a suspension from March to October of 1963. The brotherhood appealed to the National Railroad Adjustment Board on behalf of the employee, claiming that the discharge was wrongful and seeking to recover lost wages and vacation pay. The case is presently pending before the board.

After various hearings in the case pending in the Court of Common Pleas, The Detroit and Toledo Shore Line was dismissed and the other relators herein are now being sued as individuals. The action in the Court of Common Pleas claims a conspiracy to damage plaintiff and injure his reputation among his fellow employees and with his brotherhood and seeks compensatory and punitive damages for injuries suffered by him for humiliation, physical pain and mental anguish. A motion for summary judgment filed by defendant was overruled.

Messrs. Robison, Curphey & O'Connell and *Mr. John M. Curphey,* for relators.

Messrs. Brady, Whitehead, Simmons, Metzger & Hamilton and *Mr. Raymond S. Metzger,* for respondents.

Per Curiam. The instant case in prohibition is before this court on a demurrer to the petition. A ruling on the demurrer is dispositive of the action.

In *State, ex rel. Mansfield Telephone Co., v. Mayer et al., Judges,* 5 Ohio St. 2d 222, 223, it is said:

> "The rule is firmly established that the Court of Common Pleas is a court of general jurisdiction and, as such, possesses the authority initially to determine its own jurisdiction over both the person and the subject matter in an action before it, subject to the right of appeal; and generally prohibition, an extraordinary remedy entertained with caution, will not lie to prevent an anticipated erroneous judgment."

The demurrer to the petition is sustained and the writ is denied.

Writ denied.

TAFT, C. J., ZIMMERMAN, MATTHIAS, O'NEILL, HERBERT, SCHNEIDER and BROWN, JJ., concur.

JUDGMENT OF THE SUPREME COURT OF OHIO.

(July 19, 1967.)

No. 40867. IN PROHIBITION.

This cause originated in this Court and was heard in the manner prescribed by law. On consideration thereof, the demurrer to the petition is sustained and writ denied, for the reasons set forth in the opinion rendered herein.

PETITION FOR WRIT OF PROHIBITION.

(Filed in the Supreme Court of Ohio March 17, 1967.)

Plaintiffs-relators bring this action to prohibit defendants-respondents from assuming jurisdiction over an employee's grievance dispute within the sole and exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act, and for their cause of action aver as follows:

1. Plaintiff-relator The Detroit and Toledo Shore Line Railroad Company ("Shore Line") is a Michigan corporation authorized to do business in Ohio and an interstate carrier by rail subject to the Railway Labor Act (45 U. S. C. A. § 151 et seq.). Plaintiff-relator Clayton J. McPhail is General Manager, plaintiff-relator Burt T. Cool is assistant to the General Manager and plaintiff-relator Richard A. Altmeier is Superintendent of the Shore Line. At all times herein concerned they were acting in their official capacities as officials on behalf of the Shore Line.

2. On March 16, 1963 plaintiff-relator Burt T. Cool, then Superintendent, assessed the discipline of discharge

on behalf of the Shore Line against Emery F. Gensler of Toledo, Ohio, an employee of the Shore Line, following an investigation and hearing with regard to a dispute with said employee over his conduct as an employee, which dispute arose on the property on February 8, 1963. Said employee appealed from this decision on April 15, 1963 to the General Manager of the Shore Line requesting reinstatement in accordance with his rights under Section 3, First (i) of the Railway Labor Act and articles 31(b) and 36(f) of the collective bargaining agreement between the Shore Line and the Brotherhood of Locomotive Firemen and Enginemen, of which he was a member. On October 4, 1963 plaintiff-relator Clayton J. McPhail acted on this appeal and modified the discharge assessed to that of suspension without pay from March 16, 1963 to October 7, 1963, with restoration of seniority rights unimpaired, and said employee thereafter returned to service following resolution of an additional dispute as to whether it was necessary for him to take a physical examination.

3. The Brotherhood of Locomotive Firemen and Enginemen on or about December 20, 1964 filed a submission with the National Railroad Adjustment Board, First Division, in Chicago, Illinois, on behalf of said employee and in accordance with his rights under Section 3, First (i) of the Railway Labor Act, for a sustaining award, which submission bears docket No. 40951. As a basis for this submission, the statement of facts therein alleges in substance that said employee was wrongfully disciplined on March 16, 1963, as a result of the dispute which arose on February 8, 1963, because the evidence did not support the charge against him and because he did not receive a fair hearing. In the statement of claim in this submission, said employee seeks lost wages for the period in dispute, including the period of his suspension from

service beginning March 16, 1963, vacation pay and the removal from his employment record of the disciplinary proceedings. On or about April 22, 1965 the Shore Line filed its Answer with supporting exhibits and Brief in Support thereof, to which a reply was thereafter filed. The submission was set for oral hearing on November 16, 1965, but said employee's representative waived oral hearing under date of November 6, 1965 and the matter was thereafter transferred to hearing-waived status. The submission is presently pending before the National Railroad Adjustment Board.

4. On April 12, 1963 said employee filed suit in the United States District Court for the Northern District of Ohio, Western Division, at Toledo, Ohio, cause No. C-63-59, against plaintiffs-relators, as well as against other officers of the Shore Line, based upon the same dispute which arose on February 8, 1963, alleging a conspiracy to secure his dismissal from service on March 16, 1963 and claiming compensatory and punitive damages therefor. By amended complaint filed October 10, 1963, said employee sought damages for lost wages, physical pain and suffering and mental anguish. Following the filing of Briefs and oral argument, on December 27, 1963 the United States District Judge granted a motion to dismiss and ordered the action dismissed with prejudice, as the court had no jurisdiction of the subject matter, because said employee had failed to exhaust his administrative remedies by filing a submission with the National Railroad Adjustment Board and because of an absence of diversity of citizenship between the parties. No appeal was taken from this order.

5. On April 22, 1964 said employee filed an action in the Court of Common Pleas of Lucas County, Ohio,

cause No. 196365, against plaintiffs-relators, based upon the same allegations as set forth in his prior action in the United States District Court. This petition asked for compensatory and punitive damages for humiliation, physical pain, mental anguish, and injury to his reputation among his fellow employees and in his relationship with his union, but did not ask for damages for lost wages as a result of the disciplinary suspension. On October 1, 1964 plaintiffs-relators filed a Motion for Summary Judgment with supporting affidavits and Brief upon the ground that the court did not have jurisdiction of the subject matter, which motion was set for hearing on October 21, 1964, but on October 6, 1964 said employee dismissed this action without prejudice.

6. On January 26, 1965 said employee re-filed his action in the Court of Common Pleas of Lucas County, Ohio, cause No. 197978, against plaintiffs-relators, based upon the identical facts alleged in the prior actions and in his pending submission before the National Railroad Adjustment Board, seeking the same damages as in the prior action. On November 15, 1965 plaintiffs-relators again filed a Motion for Summary Judgment with supporting affidavits and Brief upon the ground that the court did not have jurisdiction of the subject matter. On July 12, 1966 said employee dismissed the Shore Line without prejudice as a party defendant to this action, and following oral argument on the Motion for Summary Judgment, on November 18, 1966, upon oral motion, he amended the Petition by interlineation to allege that the individual plaintiffs-relators were acting in their individual capacities at the time of the alleged conspiracy. On March 14, 1967 an order was entered by defendant-respondent John J. Connors overruling the Motion for Summary Judgment.

7. The Court of Common Pleas of Lucas County, Ohio does not have jurisdiction of the subject matter of said pending action and a trial by jury over the merits of the disciplinary proceedings involving said employee is not within, but is in excess of, its authorized power and jurisdiction for the following reasons:

(1) The National Railroad Adjustment Board has primary, mandatory and exclusive jurisdiction thereof under the Railway Labor Act and the decision of the United States Supreme Court in *Brotherhood of Locomotive Engineers v. L & N R. Co.*, 373 U. S. 33, 83 S. Ct. 1059, 10 L. Ed. 2d 172 (1963);

(2) Said employee has filed a submission based upon the identical alleged facts with the National Railroad Adjustment Board, in accordance with his rights under Section 3, First (i) of the Railway Labor Act, but he has not exhausted his administrative remedies by waiting for a determination and decision of that Board, as required by the decision of this Court in *Ladd v. The New York Central Rd. Co.*, 170 Ohio St. 491 (1960); and

(3) The final order entered in the United States District Court on December 27, 1963 is *res judicata* with respect to the issue of jurisdiction and a bar to the pending action in the Court of Common Pleas of Lucas County, Ohio.

8. Unless prohibited by this Court, defendants-respondents will usurp the exclusive jurisdiction of the National Railroad Adjustment Board and hear said employee's alleged cause of action on the merits, thereby defeating plaintiffs-relators' federal rights and the effect of any contrary Board decision on the merits.

9. Plaintiffs-relators do not have an adequate remedy at law by way of appeal, since the order overruling their Motion for Summary Judgment is not a final, appealable order, nor do they have an adequate remedy at law before the National Railroad Adjustment Board, since that Board has no power over a state court, nor do they have an adequate remedy at law in the federal judiciary system prior to the decision of this Court in the premises.

WHEREFORE, plaintiffs-relators pray for a writ of prohibition to said defendants-respondents prohibiting them from assuming jurisdiction in said pending action and from further proceeding therein.

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Attorneys for Plaintiffs-Relators.

RAILWAY LABOR ACT, § 3 FIRST
(45 U. S. C. A. § 153 FIRST).

§ 153. National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards; judicial review.

First. There is established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divi-

sions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as

"referee," to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the award shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the divi-

sion shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of Title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction

which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after June 21, 1934, and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided,* however, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation

Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) of this section, with respect to a division of the Adjustment Board.